



ADMINISTRATION AND
MANAGEMENT

OFFICE OF THE SECRETARY OF DEFENSE

**1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950**

FEB 1 2006

**MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, PROGRAM ANALYSIS AND EVALUATION
DIRECTOR, NET ASSESSMENT
DIRECTOR, FORCE TRANSFORMATION
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES**

**SUBJECT: Executive Order (EO) 13392 on the Freedom of Information Act (FOIA) – DoD
Implementation**

On December 19, 2005, the President signed EO 13392, "Improving Agency Disclosure of Information." EO 13392 sets new standards for Federal Agency FOIA programs by ordering that agencies emphasize a new citizen-centered approach to the FOIA with a results-oriented focus.

The first requirement of EO 13392 is for agency heads to name an Agency Chief FOIA Officer (ACFO) at the Assistant Secretary or equivalent level. On January 11, 2006, the Deputy Secretary of Defense signed the memorandum at attachment 1 designating the Director, Administration and Management (DA&M) as the ACFO for the DoD. As ACFO, I have designated the Defense Freedom of Information Policy Office (DFOIPO), a DA&M staff element, as the responsible action agent to implement the provisions of EO 13392 throughout DoD.

To comply with the provisions of the EO, DoD Components must ensure that proper procedures are established and adequate resources are applied to their FOIA programs. Recent heightened interest in the FOIA from the public, the media, watchdog organizations, and the Congress has resulted in the need for the Federal Agencies to re-examine their FOIA programs. EO 13392 is a reflection of this elevated visibility and interest. Historically, DoD Component FOIA programs have been under-emphasized, resulting in inadequate staffing and funding. EO 13392 requires DoD Components place a higher degree of senior leader oversight on their respective FOIA programs.

The EO requires Federal Agencies take specific steps to complete implementation. These steps are to:

OSD 01711-06



- Establish FOIA Requester Service Centers;
- Establish FOIA Public Liaisons;
- Conduct a thorough review of agency FOIA operations with focus on eliminating or reducing FOIA backlog;
- Develop an agency plan to improve FOIA operations and to eliminate or reduce FOIA backlog; and to
- Submit a report to the Attorney General and Director, Office of Management and Budget (OMB) summarizing the results of the agency review. This report will also include a copy of the agency's plan.

Within DoD, implementation of the EO will be conducted in three phases:

- Phase I: Establish a FOIA organizational structure and increase public awareness;
- Phase II: Review current FOIA operations; develop a plan for improvement; and report results; and
- Phase III: Improve FOIA services and eliminate or reduce backlog.

FOIA Requester Service Centers. In accordance with section 2(c)(i) of the EO, all DoD Components shall establish one or more FOIA Requester Service Centers to serve as initial points of contact for FOIA requesters to receive status updates and any appropriate information about their requests. It is recognized that many Components already have established FOIA Offices that could be redesignated as FOIA Requester Service Centers. In accordance with the EO, FOIA requesters shall be treated as customers seeking a service from their Federal Government. Therefore, FOIA Requester Service Centers shall have the ability to locate the current status of any requests within their purview and to respond professionally to requesters in need of assistance.

DoD Components shall have their respective Requester Service Centers designated and operational by March 1, 2006. Complete address listings for Requester Service Centers will be provided to the DFOIPO. The DFOIPO will provide specific guidance concerning this reporting requirement.

FOIA Public Liaisons. Section 2(c)(ii) of the EO requires the ACFO to designate FOIA Public Liaisons who shall serve as supervisory officials to whom requesters can raise concerns about the service received from the FOIA Requester Service Centers. Individuals named as FOIA Public Liaisons shall be in addition to and separate from FOIA Requester Service Center personnel. The number of FOIA Public Liaisons, as well as the option for larger DoD Components to designate Chief FOIA Public Liaisons, is at the discretion of individual DoD Components. Chief FOIA Public Liaisons would provide supervisory oversight essential for large Components with geographically dispersed subordinate elements. It is envisioned that each DoD Component cited at attachment 2 will designate a Chief FOIA Public Liaison to represent FOIA services from a Component perspective. Additional Chief FOIA Public Liaisons within the Component are optional and would be determined by organizational size, structure, and dispersion. FOIA Public Liaisons may serve in a FOIA Requester Service Center or another location, shall report via FOIA technical channels to the ACFO, and should be at a grade level commensurate with the importance of the position. The Component Chief FOIA Public Liaison

positions at attachment 2 should be staffed no lower than GS-15/O6-Colonel/Captain level. DoD Components shall ensure that personnel with appropriate FOIA knowledge and expertise be designated as FOIA Public Liaisons. It would be appropriate, therefore, to designate the existing DoD Component FOIA policy positions as FOIA Public Liaisons concurrent with an appropriate billet upgrade to reflect the new duties and increased responsibilities prescribed in EO 13392.

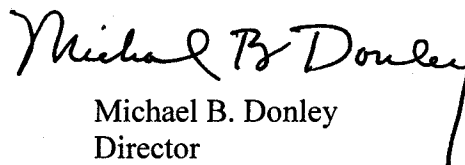
DoD Components shall submit their appointments for Component Chief FOIA Public Liaison positions complete with grade/rank, duty title, and contact information to the DFOIPO by March 1, 2006. The ACFO will designate each in writing to formalize the structure at attachment 2 in accordance with the intent of the EO. Component Chief FOIA Public Liaisons will similarly designate in writing FOIA Public Liaisons throughout the Component organization. The Office of the Secretary of Defense, the Joint Staff, the Combatant Commands, and selected DoD Field Activities will be served by the OSD FOIA Public Liaison as reflected at attachment 2. Therefore, these Components are not tasked to appoint FOIA Public Liaisons. Because public awareness is a principal objective of the EO, contact information for the networks of FOIA Public Liaisons and Requester Service Centers shall be posted to organizational web sites immediately following official designation.

Review, Plan and Report. Section 3 of the EO requires the ACFO to conduct a review of current Component FOIA operations and to develop an agency-specific plan to ensure that the agency's administration of the FOIA is consistent with applicable law and the EO. The Secretary of Defense will submit a summary of this review and the agency plan to the Attorney General and the OMB Director by June 14, 2006. The DFOIPO will lead the DoD FOIA review and development of the plan. DoD Component support is essential to both efforts. DoD Components shall conduct extensive internal reviews of their respective FOIA programs and will submit their reviews to the DFOIPO by May 1, 2006. Development of the DoD plan will be a collaborative effort, and Component Chief FOIA Public Liaisons will be principal points of contact.

By February 10, 2006, the DFOIPO will provide additional information concerning the required format and instructions for all DoD Component obligations specified in this EO implementation memorandum.

This is an important endeavor and I look forward to working with the Component Chief FOIA Public Liaisons in establishing a DoD network of professional FOIA Public Liaisons and Requester Service Centers trained and motivated to provide better service to the public.

My point of contact for this initiative is Mr. Will Kammer, Chief, DFOIPO. He can be contacted at 703-696-4495.


Michael B. Donley
Director

Attachments:
As stated

Attachment

1



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

JAN 11 2006

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
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SUBJECT: Executive Order (EO) 13392 on the Freedom of Information Act (FOIA)

On December 14, 2005, the President signed the attached EO, "Improving Agency Disclosure of Information," that emphasizes a new citizen centered and results oriented focus on agency Freedom of Information Act (FOIA) programs. The EO directs that the head of each agency shall designate a senior official at the Assistant Secretary or equivalent level to serve as the Chief FOIA Officer. Accordingly, the Director, Administration and Management (DA&M) is designated as the Chief FOIA Officer for the Department.

In his capacity as the DoD Chief FOIA Officer, the DA&M will issue guidance to ensure that the Department complies with the spirit and intent of the EO. The DA&M will oversee the efforts of the DoD Components to establish FOIA Requester Service Centers and FOIA Public Liaisons, both described in the attached EO. He will also lead the development of a DoD plan establishing goals to improve FOIA processing and to reduce or eliminate FOIA case backlogs.

In accordance with the provisions of the EO, DoD Components shall commit adequate resources to FOIA Requester Service Centers and FOIA Public Liaisons. Forthcoming guidance from the DA&M will provide the DoD Components a concept plan for implementing the EO and the opportunity to indicate requirements for additional necessary resources.

Attachment:
As Stated



OSD 00001-06



Federal Register

Monday,
December 19, 2005

Part V

The President

Executive Order 13392—Improving
Agency Disclosure of Information

Presidential Documents

Title 3—**Executive Order 13392 of December 14, 2005****The President****Improving Agency Disclosure of Information**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to ensure appropriate agency disclosure of information, and consistent with the goals of section 552 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Policy.

(a) The effective functioning of our constitutional democracy depends upon the participation in public life of a citizenry that is well informed. For nearly four decades, the Freedom of Information Act (FOIA) has provided an important means through which the public can obtain information regarding the activities of Federal agencies. Under the FOIA, the public can obtain records from any Federal agency, subject to the exemptions enacted by the Congress to protect information that must be held in confidence for the Government to function effectively or for other purposes.

(b) FOIA requesters are seeking a service from the Federal Government and should be treated as such. Accordingly, in responding to a FOIA request, agencies shall respond courteously and appropriately. Moreover, agencies shall provide FOIA requesters, and the public in general, with citizen-centered ways to learn about the FOIA process, about agency records that are publicly available (e.g., on the agency's website), and about the status of a person's FOIA request and appropriate information about the agency's response.

(c) Agency FOIA operations shall be both results-oriented and produce results. Accordingly, agencies shall process requests under the FOIA in an efficient and appropriate manner and achieve tangible, measurable improvements in FOIA processing. When an agency's FOIA program does not produce such results, it should be reformed, consistent with available resources appropriated by the Congress and applicable law, to increase efficiency and better reflect the policy goals and objectives of this order.

(d) A citizen-centered and results-oriented approach will improve service and performance, thereby strengthening compliance with the FOIA, and will help avoid disputes and related litigation.

Sec. 2. Agency Chief FOIA Officers.

(a) *Designation.* The head of each agency shall designate within 30 days of the date of this order a senior official of such agency (at the Assistant Secretary or equivalent level), to serve as the Chief FOIA Officer of that agency. The head of the agency shall promptly notify the Director of the Office of Management and Budget (OMB Director) and the Attorney General of such designation and of any changes thereafter in such designation.

(b) *General Duties.* The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency:

(i) have agency-wide responsibility for efficient and appropriate compliance with the FOIA;

(ii) monitor FOIA implementation throughout the agency, including through the use of meetings with the public to the extent deemed appropriate by the agency's Chief FOIA Officer, and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing the FOIA, including the extent to which the agency meets the milestones

in the agency's plan under section 3(b) of this order and training and reporting standards established consistent with applicable law and this order;

(iii) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to carry out the policy set forth in section 1 of this order;

(iv) review and report, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing the FOIA; and

(v) facilitate public understanding of the purposes of the FOIA's statutory exemptions by including concise descriptions of the exemptions in both the agency's FOIA handbook issued under section 552(g) of title 5, United States Code, and the agency's annual FOIA report, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply.

(c) *FOIA Requester Service Center and FOIA Public Liaisons.* In order to ensure appropriate communication with FOIA requesters:

(i) Each agency shall establish one or more FOIA Requester Service Centers (Center), as appropriate, which shall serve as the first place that a FOIA requester can contact to seek information concerning the status of the person's FOIA request and appropriate information about the agency's FOIA response. The Center shall include appropriate staff to receive and respond to inquiries from FOIA requesters;

(ii) The agency Chief FOIA Officer shall designate one or more agency officials, as appropriate, as FOIA Public Liaisons, who may serve in the Center or who may serve in a separate office. FOIA Public Liaisons shall serve as supervisory officials to whom a FOIA requester can raise concerns about the service the FOIA requester has received from the Center, following an initial response from the Center staff. FOIA Public Liaisons shall seek to ensure a service-oriented response to FOIA requests and FOIA-related inquiries. For example, the FOIA Public Liaison shall assist, as appropriate, in reducing delays, increasing transparency and understanding of the status of requests, and resolving disputes. FOIA Public Liaisons shall report to the agency Chief FOIA Officer on their activities and shall perform their duties consistent with applicable law and agency regulations;

(iii) In addition to the services to FOIA requesters provided by the Center and FOIA Public Liaisons, the agency Chief FOIA Officer shall also consider what other FOIA-related assistance to the public should appropriately be provided by the agency;

(iv) In establishing the Centers and designating FOIA Public Liaisons, the agency shall use, as appropriate, existing agency staff and resources. A Center shall have appropriate staff to receive and respond to inquiries from FOIA requesters;

(v) As determined by the agency Chief FOIA Officer, in consultation with the FOIA Public Liaisons, each agency shall post appropriate information about its Center or Centers on the agency's website, including contact information for its FOIA Public Liaisons. In the case of an agency without a website, the agency shall publish the information on the Firstgov.gov website or, in the case of any agency with neither a website nor the capability to post on the Firstgov.gov website, in the **Federal Register**; and

(vi) The agency Chief FOIA Officer shall ensure that the agency has in place a method (or methods), including through the use of the Center, to receive and respond promptly and appropriately to inquiries from FOIA requesters about the status of their requests. The Chief FOIA Officer shall

also consider, in consultation with the FOIA Public Liaisons, as appropriate, whether the agency's implementation of other means (such as tracking numbers for requests, or an agency telephone or Internet hotline) would be appropriate for responding to status inquiries.

Sec. 3. Review, Plan, and Report.

(a) *Review.* Each agency's Chief FOIA Officer shall conduct a review of the agency's FOIA operations to determine whether agency practices are consistent with the policies set forth in section 1 of this order. In conducting this review, the Chief FOIA Officer shall:

(i) evaluate, with reference to numerical and statistical benchmarks where appropriate, the agency's administration of the FOIA, including the agency's expenditure of resources on FOIA compliance and the extent to which, if any, requests for records have not been responded to within the statutory time limit (backlog);

(ii) review the processes and practices by which the agency assists and informs the public regarding the FOIA process;

(iii) examine the agency's:

(A) use of information technology in responding to FOIA requests, including without limitation the tracking of FOIA requests and communication with requesters;

(B) practices with respect to requests for expedited processing; and

(C) implementation of multi-track processing if used by such agency;

(iv) review the agency's policies and practices relating to the availability of public information through websites and other means, including the use of websites to make available the records described in section 552(a)(2) of title 5, United States Code; and

(v) identify ways to eliminate or reduce its FOIA backlog, consistent with available resources and taking into consideration the volume and complexity of the FOIA requests pending with the agency.

(b) *Plan.*

(i) Each agency's Chief FOIA Officer shall develop, in consultation as appropriate with the staff of the agency (including the FOIA Public Liaisons), the Attorney General, and the OMB Director, an agency-specific plan to ensure that the agency's administration of the FOIA is in accordance with applicable law and the policies set forth in section 1 of this order. The plan, which shall be submitted to the head of the agency for approval, shall address the agency's implementation of the FOIA during fiscal years 2006 and 2007.

(ii) The plan shall include specific activities that the agency will implement to eliminate or reduce the agency's FOIA backlog, including (as applicable) changes that will make the processing of FOIA requests more streamlined and effective, as well as increased reliance on the dissemination of records that can be made available to the public through a website or other means that do not require the public to make a request for the records under the FOIA.

(iii) The plan shall also include activities to increase public awareness of FOIA processing, including as appropriate, expanded use of the agency's Center and its FOIA Public Liaisons.

(iv) The plan shall also include, taking appropriate account of the resources available to the agency and the mission of the agency, concrete milestones, with specific timetables and outcomes to be achieved, by which the head of the agency, after consultation with the OMB Director, shall measure and evaluate the agency's success in the implementation of the plan.

(c) *Agency Reports to the Attorney General and OMB Director.*

(i) The head of each agency shall submit a report, no later than 6 months from the date of this order, to the Attorney General and the OMB Director that summarizes the results of the review under section 3(a) of this order and encloses a copy of the agency's plan under section 3(b) of this order.

The agency shall publish a copy of the agency's report on the agency's website or, in the case of an agency without a website, on the Firstgov.gov website, or, in the case of any agency with neither a website nor the capability to publish on the Firstgov.gov website, in the **Federal Register**.

(ii) The head of each agency shall include in the agency's annual FOIA reports for fiscal years 2006 and 2007 a report on the agency's development and implementation of its plan under section 3(b) of this order and on the agency's performance in meeting the milestones set forth in that plan, consistent with any related guidelines the Attorney General may issue under section 552(e) of title 5, United States Code.

(iii) If the agency does not meet a milestone in its plan, the head of the agency shall:

(A) identify this deficiency in the annual FOIA report to the Attorney General;

(B) explain in the annual report the reasons for the agency's failure to meet the milestone;

(C) outline in the annual report the steps that the agency has already taken, and will be taking, to address the deficiency; and

(D) report this deficiency to the President's Management Council.

Sec. 4. Attorney General.

(a) *Report.* The Attorney General, using the reports submitted by the agencies under subsection 3(c)(i) of this order and the information submitted by agencies in their annual FOIA reports for fiscal year 2005, shall submit to the President, no later than 10 months from the date of this order, a report on agency FOIA implementation. The Attorney General shall consult the OMB Director in the preparation of the report and shall include in the report appropriate recommendations on administrative or other agency actions for continued agency dissemination and release of public information. The Attorney General shall thereafter submit two further annual reports, by June 1, 2007, and June 1, 2008, that provide the President with an update on the agencies' implementation of the FOIA and of their plans under section 3(b) of this order.

(b) *Guidance.* The Attorney General shall issue such instructions and guidance to the heads of departments and agencies as may be appropriate to implement sections 3(b) and 3(c) of this order.

Sec. 5. OMB Director. The OMB Director may issue such instructions to the heads of agencies as are necessary to implement this order, other than sections 3(b) and 3(c) of this order.

Sec. 6. Definitions. As used in this order:

(a) the term "agency" has the same meaning as the term "agency" under section 552(f)(1) of title 5, United States Code; and

(b) the term "record" has the same meaning as the term "record" under section 552(f)(2) of title 5, United States Code.

Sec. 7. General Provisions.

(a) The agency reviews under section 3(a) of this order and agency plans under section 3(b) of this order shall be conducted and developed in accordance with applicable law and applicable guidance issued by the President, the Attorney General, and the OMB Director, including the laws and guidance regarding information technology and the dissemination of information.

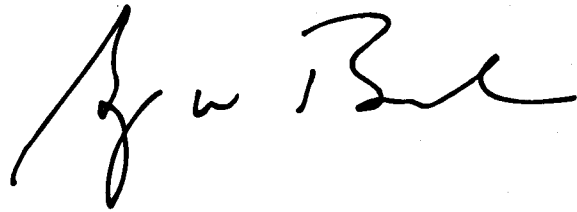
(b) This order:

(i) shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations;

(ii) shall not be construed to impair or otherwise affect the functions of the OMB Director relating to budget, legislative, or administrative proposals; and

(iii) is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit,

substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

A handwritten signature in black ink, appearing to read "G W Bush", is centered on the page.

THE WHITE HOUSE,
December 14, 2005.

[FR Doc. 05-24255

Filed 12-15-05; 8:45 am]

Billing code 3195-01-P

Attachment

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DoD Component FOIA Chief Public Liaisons

